**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO.6093 OF 2005.**

Kashiram Shrawan Pardhi
since deceased through his
legal representatives

1A. Dharmaraj Kashiram Pardhi,
Age: 52 yrs., Occ: Agriculture,
1B. Arjun Kashiram Pardhi,
Age: 50 yrs., Occ.: Agriculture,
2. Khandui Kashiram Pardhi,
Age: 47 years, Occ.: Agriculture,
3. Haushabai Lahanu Bendkoli,
All residents of Sadgaon,
Taluka & Dist.Nashik. ... Petitioners

Versus.

Sakharam Trimbak Pardhi
(since deceased through LRs.)

1. Kacharu Sakharam Pardhi
Age: 48 years.
2. Madhukar Sakharam Pardhi
Age: 45 years.
3. Valu Sakharam Pardhi,
Age: 24 years.
4. Dhavalu Sakharam Pardhi,
Age: 22 years.
5. (Deleted).
All agriculturists by occupation
and all residing at Sadgaon,
Post: Taluka & Dist.Nashik.
6. The Collector,
Nashik, Dist. Nashik.
7. The Tahasildar,
Nashik, Dist. Nashik.
8. The Revenue Commissioner,
Nashik Division, Nashik. ... Respondents.

Shri Salunke holding for Shri P.B.Shah for the Petitioner.

Shri M.S.Karnik for the Respondents Nos.1 to 4.

**CORAM : ABHAY S.OKA, J.**

**DATED : 12th June, 2007.**

**ORAL JUDGMENT.:**

1. Notice for final disposal at admission stage has been issued by order dated 14th September 2005. The 5th Respondent has been deleted as per the order of this Court passed earlier. The first two Respondents are represented by an Advocate.

2. The Petitioners have taken exception to the order dated 16th May 2005 passed by the Additional Collector, Nashik and letter dated 30th August 2005 issued by the Tahsildar, Nashik. The Petitioners are the original Plaintiffs who filed a suit for specific performance of the agreement for sale of the suit land against the 1st to 5th Respondents herein. A decree for specific performance was passed. The said decree provided that the permission of the Competent Authority will have to be obtained for execution of the sale deed and accordingly, the Defendants in the suit were directed to obtain the permission of the Competent Authority. As of today, the said decree has attained finality. In execution of the said decree, the Civil Court appointed a Court Commissioner who applied on behalf of the original Defendants for grant of permission to sell the suit land. By order dated 15th June 2006, the said application made by the Court

Commissioner was rejected by the Additional Collector. The Additional Collector forwarded a copy of the said order to the Tahsildar, Nashik with an endorsement that "if the land of the Scheduled Tribe is transferred without prior permission of the Collector then necessary action as per Section 326 of the Maharashtra Land Revenue Code, 1966 be taken and follow up report along with the corrected 7x12 extract shall be presented to this office within one month". By the communication dated 30th August 2005, the Tahsildar, Nashik referred to the aforesaid order of the Additional Tahsildar and ordered the owner to hand over possession of the land as the same is in unlawful possession of the Petitioners without permission. The Tahsildar stated that the work of taking over possession will be done on 15th September 2005.

3. The learned Advocate for the Petitioners invited my attention to the decree passed by the Civil Court in the suit for specific performance. He pointed out that the said decree has been confirmed in Appeal by the District Court. He pointed out that the 1st to 5th Respondents had filed a counter-claim for possession of the suit land and the same has been dismissed by the trial Court. He pointed out that a Revision Application for challenging the order dated 16th May 2005 passed by the Additional Collector has been filed by the

Petitioners and the same is pending. He also pointed out that as per the undertaking of the Petitioner recorded in the order dated 14th September 2005 passed by this Court, the Petitioners have taken out proceedings for modification of the decree passed by the trial Court praying for deletion of condition regarding obtaining sale permission and the said application is pending. The learned Advocate for the Respondents Nos.1 to 4 submitted that in case of illegal and unauthorised transfer, the authorities under the Maharashtra Land Revenue Code, 1966 can always take action in accordance with the law and that is how the Tahsildar has issued communication dated 30th August 2005. He submitted that no fault can be found with the said communication.

4. I have considered the submissions. A perusal of the endorsement made by the Additional Collector on the copy of the order dated 15th June 2005 which was forwarded to the Tahsildar shows that all that has been stated is that if the land of the Scheduled Tribe is transferred without prior permission of the Collector then necessary action under the Maharashtra Land Revenue Code 1966 shall be taken and necessary report shall be presented to his office. It was obvious that the direction was issued to initiate appropriate proceedings if there was an unauthorised transfer. At the highest, an appropriate proceedings will have to be initiated for

recovery of possession on the basis of the said endorsement made by the Additional Collector. However, there was no occasion for the Tahsildar to proceed to take over possession of the suit land. Therefore, the action of the Tahsildar of issuing communication dated 30th August 2005 will have to be quashed and set aside. A prayer has been made in this writ petition for setting aside the order dated 16th May 2005 passed by the Additional Collector. It must be stated here that the Petitioners have filed appropriate proceedings in the form of a Revision Application for challenging the order passed by the Additional Collector. The said Revision will have to be decided in accordance with the law.

5. Though I am inclined to set aside the communication dated 30th August 2005 of the Tahsildar, the order of this Court will not preclude the parties or the authorities from initiating appropriate proceedings for taking over possession of the suit land. It is obvious that if such proceedings are taken out, no order will be passed without giving an opportunity of being heard to the Petitioners.

6. Hence the following order is passed:

(i) The impugned order/communication dated 30th August 2005 (Exhibit "E" to the

petition) issued by the Tahsildar, Nashik, is quashed and set aside.

(ii) Notwithstanding this order, the Revision Application No.193 of 2005 filed by the Petitioners shall be decided by the concerned authority in accordance with law.

(iii) This order will not preclude the Respondents or the authorities from initiating proceedings for recovery of possession of the suit land. If such a proceeding is initiated, no order will be passed against the Petitioners without giving them an opportunity of being heard.

(iv) Rule is partly made absolute in the above terms with no order as to costs.

**Judge.**